IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.672 of 2005
Date of decision:10.10.2006

Sanjeev Kumar Pandhi

....Appellant

versus

Commissioner of Income Tax-I, Jalandhar

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr.Ravish Sood, Advocate, for the appellant.

JUDGMENT:

1. This appeal has been preferred by the assessee against the order of the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar dated 28.7.2005 in ITA No.84 (ASR)/2004, in respect of assessment year 2000-01, proposing following substantial questions of law:-

> "1. Whether on facts and circumstances of the case, the Tribunal was right in law in sustaining an addition of Rs.1,18,000/- towards investment in construction of 'Air Pollution Control Device', despite appreciating that the source of the said investment stood duly explained by the assessee and accepted by the authorities below?
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> 2. Whether on the facts and circumstances of the case the Tribunal was right in law in rejecting the assessee's 'specific ground of appeal' which involved adjudication upon a 'question of law' on the basis of 'facts borne on record', pertaining to entitlement of the assessee towards depreciation on assets, when the particulars of said assets were duly furnished to the AO, in light of the fact that on omission of section 34(1), the assessee was statutorily entitled to depreciation under section 32(1) r.w. Section 29 of the Income Tax Act, 1961, merely on the ground that the said ground was not taken before the authorities below?

> 3. Whether on the facts and circumstances of the case the Tribunal despite appreciating that there was no 'suppression of sales' by the assessee and still further no cognizance of the retracted agreement of the assessee agreeing to be assessed at an incoem of Rs.4 lacs could be taken, was right in law by not accepting the 'Sales' reflected by the assessee and therein arbitrarily substituting the same by an 'estimated' figure?"

2. The assessee filed return of income for the assessment year 2000-01 declaring income of Rs.1,84,784/-. On 3.3.2000, survey was carried out under section 133 of the Income Tax Act, 1961 (for short, 'the Act') at the business premises of the assessee and inventory of stocks of bricks, coal and wood was prepared. The case was taken up for scrutiny. The assessee admitted that goods and registers were not complete. Investment of Rs.3,80,000/- in April/May 1999 for construction of Air Pollution Control Device (Chimney) (APCD) was also admitted. The Assessing Officer observed that the assessee could not justify the investment out of the income declared and offered additional income of Rs.1,50,000/- as per order sheet dated 24.1.2002 which was signed by the assessee. Accordingly, addition of amount was made to the income of the assessee. The assessee preferred an appeal and submitted that source of investment was duly shown in the capital statement filed before the Assessing Officer and, therefore, addition was not justified. The CIT(A) dismissed the appeal.

3. On further appeal, the Tribunal held that part addition was justified as the difference counted by the Assessing Officer was Rs.1,18,000/- and the Assessing Officer was not justified in making addition to the extent of surrender. The appeal of the assessee was, accordingly, allowed to this extent, as per finding recorded in para 5.3.

4. Learned counsel for the assessee submitted that the source of assessee for having received 80000 bricks from his brother having been explained and no payment having been made by the assessee, the addition was not justified and, therefore, the finding was vitiated. Reliance was placed on judgment of the Hon'ble Supreme Court in **Commissioner of Income Tax v. Smt.PK Noorjahan**, (1999) 237 ITR 570, to submit that discretion under section 69 of the Act to treat unexplained income of the

assessee as income from other sources could be exercised only where the explanation of the assessee was not satisfactory and not otherwise.

5. We are unable to accept the submission made.

6. The Tribunal partially accepted the plea of the assessee, while reducing the surrendered addition from Rs.1,50,000/- to Rs.1,18,000/- while recording the following findings:

> "5.3. On consideration of the above submissions and the findings of the authorities below, we are of the view that part addition is justified in the matter. The A.O. has very clearly observed that the assessee could not justify the investment and source for construction of the APCD (Chimney). It remained same at the time of survey as well as at the assessment stage. The A.O. found the difference in the investment as estimated/reported at the time of survey as well as at the time of assessment in a sum of Rs.1,18,000/-. The assessee is justified in contending that the A.O. without any basis had proposed to make the addition of Rs.6,35,000/- as it was not based upon any facts or inspection at the spot by him. However, we may mention that the A.O. has not taken this figure ultimately in the assessment order because whatever figure the assessee has shown in a sum of Rs.4,98,000/- was taken into consideration. The case of the A.O. is based upon the surrendered Rs. 1,50,000/-. On this basis, the addition is made and confirmed by the CIT(A). However, we find that the addition of Rs.1,50,000/- is unjustified as even ultimately the difference as counted by the A.O. was Rs.1,18,000/-. It is case of the A.O. that the investment in the construction of Chimney is not proved to his satisfaction. Therefore, even if there is availability of the bricks with the assessee but the assessee had to prove the investment in the construction of the Chimney. Since the investment in the Chimney was not proved to the satisfaction of the A.O., therefore, at the most, the A.O. could have made addition of Rs.1,18,000/- even if the assessee surrendered Rs.1,50,000/-. There is no basis whatsoever to take addition of Rs.1,50,000/- against the assessee on admission because the admission of the assessee is as regards Rs. 1,50,000/- is not corroborated by any material on record. It is also a fact that the assessee did not maintain proper books of accounts and from the seized material and the inspection carried out at the time of survey showed that the assessee has made unexplained investment in the construction of chimney would go to show that the initially assessee was concealing the fact of valuation of the Chimney from the department and when investments made therein were asked to be explained then the differences were found. The version of the

> assessee would, therefore, not reliable as regards investment in the construction of the Chimney. No detail whatsoever is filed even before us to explain the investment in the construction of the Chimney. Considering the totality of the circumstances and the findings of the authorities below and submissions of the learned counsel for the assessee, we are of the view that the addition should have been restricted in this matter to Rs.1,18,000/- instead of Rs.1,50,000/-. This ground of appeal of the assessee is accordingly allowed partly and the A.O. is directed to restrict the addition of Rs.1,18,000/-."

7. From above it is evident that the Tribunal has recorded a categorical finding that there was difference in the investment as estimated/reported at the time of survey and at the time of assessment, to the extent of Rs.1,18,000/-. It was observed that even if availability of bricks with the assessee was taken into account, investment in the construction of Chimney was not proved. The contention raised is in the realm of appreciation of evidence. In para 6.2 of the order, the Tribunal rejected the plea of the revenue for addition of Rs.1,18,000/- on account sale of bricks by Rakesh Kumar brother of the assessee on the ground that the same having been used in construction of chimney has been taken care of while considering the investment therein.

8. In view of the above, we are unable to hold that any substantial question of law arises.

9. The appeal is dismissed.

(Adarsh Kumar Goel)
Judge

Oct.10, 2006 (Rajesh Bindal)
'gs' Judge